IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 19.09.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.745 of 2006

A.Farook ... Petitioner

Vs.

1.The Secretary to Government,
Food and Consumer Protection Department,
Government of India, Krishi Bhavan,
New Delhi.

2.State of Tamil Nadu,
rep. by the Secretary to Government,
Co-operation, Food and Consumer Protection
Department, Fort St. George,
Chennai-600 009.

3.The Commissioner of Police,
Coimbatore-18. .. Respondents

Petition under Article 226 of the Constitution of India for th issuance of a Writ of Habeas Corpus to call for the records of th second respondent made in C.No.01/PBMMSEC Act/IS/2006, date 15.07.2006, quash the same and produced the detenu before this Cour and set at liberty the detenu Khaja Moideen @ Khaja, son of Abdu Razak, now detained in Central Prison, Coimbatore under the Provision of Prevention of Black Marketing and Maintenance of Supplies o Essential Commodities Act, 1980 (Act 7 of 1980).

For Petitioner : Mr.V.Parthiban for
Mr.C.Prakasam

For 1st respondent : Mr. P.Kumaresan, ACGSC.,

For Respondents 2 & 3 : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, who is the brother of the detenu, by name Khaj Moideen @ Khaja, who is detained as a "Balck Marketeer" as contemplate under Section 3(2)(b) read with 3(1) of the prevention of Blac Marketing and Maintenance of Supplies of Essential Commodities Act 1980, by the impugned detention order dated 15.07.2006, challenges th same in this Petition.

2. Heard learned counsel for the petitioner as well as learne Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner, h drawing our attention to the averments in paragraph 6 of the grounds o detention, has submitted that though the detaining authority was ver well aware of the fact of the pendency of the bail application, whil arriving imminent possibility, he has mechanically observed tha "there is a real possibility of the detenu being coming out on bai by filing another bail application in future..", which shows no application of mind on his part and hence, the detention order has t be quashed

4. In the light of the above submission, we have verified para of the grounds of detention. The relevant portion reads as under.

> " I am aware that Thiru.Khaja Moideen @ Khaja was remanded to judicial custody in this case on 06.07.2006 and that he is still in Central Prison, Coimbatore, as a remand prisoner. I am aware that the bail petition filed on behalf of him before the Judicial Magistrate No.VII, Coimbatore in CMP No.4681/2006 has posted for hearing on 17.07.2006. I am also aware that there is a real possibility of his coming out on bail by filing another bail application in future since in similar cases the concerned court or Higher Courts grants bail after lapse of time."

5. As rightly pointed out by the learned counsel for th petitioner, the detaining authority was very well aware that the bai application had been filed before the Judicial Magistrate No.VII Coimbatore in CMP No.4681/2006 and the same was posted for hearing o 17.07.2006. The detention order was passed by him on 15.07.2006 While passing the detention order and considering the question o imminent possibility, though the detaining authority was very wel aware that the bail application of the detenu is pending and comes u for hearing on 17.07.2006, without reference to the said relevan aspect, has observed that there is a real possibility of his comin out on bail by filing another bail application in future. As pointe

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out earlier, so long as the CMP No.4681 of 2006 is pending before th Judicial Magistrate No.VII. Coimbatore, there is no question o granting bail by filing another bail application. The detainin authority has failed to take note of the said relevant aspect ar arrived at a conclusion mechanically in respect of imminent possibilit of coming out on bail. We are satisfied that the conclusion arrived a by the detaining authority cannot be sustained and the detention orde is liable to be quashed on the ground of non application of mind ar accordingly, the same is quashed.

6. Accordingly, the Habeas Corpus Petition is allowed and th impugned order of detention is set aside. The detenu is directed t be set at liberty forthwith from the custody unless he is required i some other case or cause.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. 1.The Secretary to Government, Food and Consumer Protection Department, Government of India, Krishi Bhavan, New Delhi.

2.The Secretary to Government,State of Tamil Nadu, Co-operation, Food and Consumer Protection Department, Fort St. George,Chennai-600 009.

3.The Commissioner of Police, Coimbatore-18.

4. The Superintendent, Central Prison, Coimbatore.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order) Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

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19.09.2006

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